

## **Amendment 2945 – Prohibits Congress from using earmarks to award “no bid” government grants and contracts.**

The Senate Department of Defense authorization bill discloses 309 earmarks costing a total of \$5.6 billion.<sup>[1]</sup> An analysis completed by Taxpayers for Common Sense, however, claims that the bill contains 90 additional undisclosed earmarks at a cost of \$8 billion<sup>[2]</sup> bringing the total cost of earmarks to \$13 billion.

All of these earmarks, costing billions of dollars, are essentially “no-bid” grants or contracts directed towards pre-selected, individual recipients.

A “no-bid” grant or contract is government funding that goes directly to an entity after bypassing the standard competitive process. Ideally, government funding is supposed to be awarded only after competing bids are solicited in order to select the most cost efficient and qualified entity to perform a service.

This amendment would prohibit the Secretary from awarding earmarked funds in the form of no-bid grants or non-competitive contracts. This would mean, in practice, that all earmark funding would be competitively bid rather than directed to a pre-selected recipient.

The amendment would apply only to new projects rather than earmarks that fund existing and on-going projects.

A waiver authority is built into the amendment to ensure that any earmarks that are urgent or extraordinary in their importance can still receive funding. Such an earmark would simply require the Secretary of Defense to certify to Congress that the earmark was needed, and it would get funded.

The Department of Defense would also be required to provide a report to Congress every year with the name of the recipients of the funds awarded, the reasons the recipient was selected and the number of entities that competed for the earmark contract.

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<sup>[1]</sup> <http://armed-services.senate.gov/Publications/S%201547%20FY08NDAA%20Projects.pdf>

<sup>[2]</sup> <http://www.taxpayer.net/budget/fy08authchart.html>

## **Congress Is Responsible For Nearly One In Five Federal Defense Dollars Awarded Without Competition For A Cost Of \$25 Billion**

A total of \$108.5 billion in grants and contracts was not fully competed by the Department of Defense in 2006.<sup>[3]</sup>

In the same year, Congress earmarked over \$9.4 billion in the Defense Appropriations bill and another \$16 billion in the Military Construction, Military Quality of Life and Veterans Affairs Appropriations bill. In total, Congress spent over \$25 billion in Defense-related no bid earmarks in 2006.<sup>[4]</sup>

That means Congress is responsible for almost one in five of the \$133.5 billion in federal Defense dollars awarded without competition in 2006.

Congress earmarked 2,847 projects in the Defense Appropriations bill and 575 projects in Military Construction, Military Quality of Life and Veterans Affairs Appropriations bill in 2006 for a total of 3,422 Defense-related projects earmarked without full and open competition.<sup>[5]</sup>

This is an overwhelming number of projects and since most members of Congress are not experts on defense systems and military hardware, it is difficult to know if these defense dollars were wisely spent or ensured the best products.

Contracts to design or construct military hardware and equipment for our men and women in combat should be awarded based upon merit rather than political connections or calculations.

## **Congressional Earmarks Should Not Be Exempt From Existing Laws Requiring Competition For Federal Grants And Contracts**

All federal contracts, grants and cooperative agreements that are awarded as the result of an earmark would be required to undergo competitive procedures by this amendment.

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<sup>[3]</sup> Paul Denett. "Enhancing Competition in Federal Acquisition," Office of Federal Procurement Policy, Office of Management and Budget, [http://www.whitehouse.gov/omb/procurement/comp\\_contracting/competition\\_memo\\_053107.pdf](http://www.whitehouse.gov/omb/procurement/comp_contracting/competition_memo_053107.pdf). This amount includes sole-source contracts (no-bid) or "less than full competition," which could have included limited competition contracts or "disadvantaged" contracts.

<sup>[4]</sup> CRS Appropriations Team. "Earmarks in FY2006 Appropriations Acts," Congressional Research Service, March 6, 2006.

<sup>[5]</sup> CRS Appropriations Team. "Earmarks in FY2006 Appropriations Acts," Congressional Research Service, March 6, 2006.

For contracts, this means that competitions must comply with existing federal procurement law and must receive two or more bids.

For grants, competitive procedures must be put in place and receive two or more applications.

Without two or more bids for either grants or contracts, the award will not be made.

Specifically, the amendment calls for all earmarks that result in contracts to come into compliance with the following laws:

- **Section 303 of the Federal Property and Administrative Services Act of 1949:** This section of law requires that competitive procedures be in place for all procurements unless there is a specific provision of law that makes an exemption. According to this section, such exceptions include: only one source is available, national security needs, and the requirements of an international treaty.
- **10 U.S. Code 2304:** This section makes similar competition requirements for all Defense contracts.
- **Federal Acquisition Regulation:** This is the 2,000-page regulatory guide for federal procurement that provides a detailed explanation of how to conduct “full and open competitions.” Such procedures include publishing acquisition opportunities on FedBizOpps.gov, mandatory evidence of appropriate market research by agencies, and promotion of competition among many sources.

Congress should not be exempted from the very competitive processes that it has applied to the awarding of all other federal grants and contracts.

But, in the rare instance that an earmark is truly urgent and necessary, the amendment has an escape clause built in. It allows the Secretary of Defense to waive the competition requirements when the need to support forces in the field exists.

Recent history has demonstrated that members of Congress are not above abusing the system.

Congress should, therefore, live by the rules it established for everyone else.

## **Competition Reduces Costs and Saves Taxpayers' Money**

The competitive process helps ensure that the government receives the highest-quality products for the least amount of money.

Without competition, earmarks may have caused the American taxpayer to spend untold billions on wasteful purchases.

There are plenty of examples of Defense dollars that have been earmarked for wasteful purposes.

Last year, the *Washington Post* published an article titled "The Project That Wouldn't Die; Using earmarks, members of Congress kept money flowing to a local company that got \$37 million for technology the military couldn't use." Vibration & Sound Solutions Ltd., a Virginia defense contractor, has received a steady flow of federal funds for various purposes and, according to the *Post*, "all the applications have one thing in common: The Pentagon hasn't wanted them."<sup>[6]</sup>

About \$10 million in federal contracts were secured by a Pennsylvania Congressman for Cornerstone Technologies LLC to spin anthracite into lightweight carbon fibers. Eight years after it was launched by the Congressman's relatives, the firm has collapsed into bankruptcy, leaving behind bad debt, embittered former employees and lingering ethics questions. "The company's vision of producing advanced materials for the Navy never left the drawing board, according the *Scranton Times Tribune*. "It was just like the Three Stooges meet anthracite," said Penn State University fuel sciences professor Harold H. Schobert, who worked on a federal contract with the firm. "These guys didn't know how to order chemicals. They didn't understand even the most fundamental aspects of how to conduct experiments. ... If they wanted to collect six- and seven-figure salaries, more power to them. I think the company was doomed from the get-go," Dr. Schobert said.<sup>[7]</sup>

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<sup>[6]</sup> Charles R. Babcock. "The Project That Wouldn't Die," *Washington Post*, page D1, June 19, 2006; <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/18/AR2006061800631.html?referrer=emailarticle>

<sup>[7]</sup> Dave Janoski. "Kanjorski vision of anthracite's future up in smoke," *Scranton Times Tribune*, June 4, 2007; [http://www.thetimes-tribune.com/site/news.cfm?newsid=18420219&BRD=2185&PAG=461&dept\\_id=415898&rft=6](http://www.thetimes-tribune.com/site/news.cfm?newsid=18420219&BRD=2185&PAG=461&dept_id=415898&rft=6)

The DP-2 aircraft has received \$63 million in taxpayer funds-- entirely through earmarks-- despite a series of Pentagon and NASA studies that found fault with the project from its beginning.<sup>[8]</sup>

More than \$30 million has been directed to 21st Century Systems Inc. (21CSI) for the development of military software. Yet, only one piece of that software has been used-- in a single Marine camp in Iraq-- and it is no longer in use.<sup>[9]</sup>

Nearly \$1.7 million was earmarked in the Fiscal Year 2007 Defense Appropriations bill for Arcadia Biosciences, based in Seattle to improve the shelf life of vegetables. The funding is supposed to help “establish and evaluate variant populations of bell pepper, cantaloupe and strawberry.”<sup>[10]</sup>

### **Awarding Earmarks Through An Open Bidding Process Will Add Accountability And Transparency and Reduce Corruption**

Competition in earmarking would add accountability and transparency and thereby reduce costs and the potential for abuse and corruption.

The Freedom of Information Act (FOIA) and other federal sunshine laws do not apply to Congress or the selection of earmark funds by members of Congress.

As a result, even the members of Congress who are expected to approve bills larded up with hundreds of earmarks do not know the merits of the projects or the basis for the decisions to fund them.

Earmarks contained within Defense appropriations bills have been linked to a number of recent Congressional corruption and ethics probes.

Congressman Randy “Duke” Cunningham resigned from the House of Representatives after he admitted to taking \$2.4 million in bribes from two defense contractors.

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<sup>[8]</sup> Jerry Kammer and Paul M. Krawzak. “Pentagon rejected aircraft built by campaign donor,” San Diego Union Tribune/COPLEY NEWS SERVICE, June 13, 2007; <http://www.signonsandiego.com/news/politics/20070613-9999-1n13airmark.html>

<sup>[9]</sup> Paul Goodsell. “Firms count on Congress for funding,” Omaha World-Herald, April 29, 2007; [http://www.omaha.com/index.php?u\\_page=2798&u\\_sid=2374508](http://www.omaha.com/index.php?u_page=2798&u_sid=2374508)

<sup>[10]</sup> “Murray and Cantwell Announce Senate Approval of nearly \$57.5 million in Job-Creating Defense Contracts for Washington State,” press release, September 29, 2006 <http://murray.senate.gov/news.cfm?id=264157>

Federal investigators are examining whether Congressman Jerry Lewis, as the House Appropriations Chairman, abused his position by steering earmarks to his political allies and former employees.

The *Wall Street Journal* notes that, “the Lewis episode underscores the link between Member-steered earmarks and the opportunity for corruption. Convicted lobbyist Jack Abramoff openly boasted that earmarks were his political currency and he called the Appropriations Committee that doles them out a ‘favor factory’ for lobbyists.”<sup>[11]</sup>

The office of every Senator and every member of the House of Representatives and the Appropriations Committees of both chambers set different policies to determine how recipients of earmarked funds are selected.

While members may choose to earmark funds for initiatives they believe are worthy or deserving, they can also base their decisions upon political considerations such as who supported them financially or otherwise in previous campaigns.

Committee chairman and members of Leadership could, likewise, award earmarks to members in exchange for a vote for a particular bill or because a loyal member of their party may be facing a difficult re-election and try to use the “bring home the bacon” approach that assumes a politician can essentially buy votes with earmarked funds.

There are numerous examples are these practices.

It was this misuse of no-bid earmarking practices that allowed former Congressman Duke Cunningham to direct millions of dollars in defense contracts to favored businesses in exchange for bribes and campaign donations.

Similarly, a 2003 earmark to create the Foreign Supplier Assessment Center (FSAC), was awarded to a company that gave the Congressman who requested it \$90,000 in campaign contributions. This same company was later convicted for giving bribes to Duke Cunningham. The Department of Defense has decided to

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<sup>[11]</sup> “Earmarker in Chief,” *Wall Street Journal*, June 15, 2006, page A14;  
<http://online.wsj.com/article/SB115033555119580784.html>

shut down the earmarked Center because it is unnecessary and wasteful spending.<sup>[12]</sup>

Requiring that all earmarked funds undergo a competitive bidding process will eliminate both the appearance and the reality of corruption by taking away the possibility that a Member of Congress could direct no-bid contracts or grants to specific campaign donors, while allowing members to continue to seek funds for particular activities they may deem important.

Following last November's elections, the incoming Chairmen of the House and Senate Appropriations Committees promised "to restore an accountable, above-board, transparent process for funding decisions and put an end to the abuses that have harmed the credibility of Congress."

Yet, no Senate Rules have been adopted to ensure earmark transparency.

*CongressDaily* reported that when asked for details about earmarks inserted into the House Defense authorization bill, "House offices contacted House Armed Services Committee staff wondering how to handle the unusual questioning from the Senate side, especially from someone not on the Senate Armed Services Committee. The queries prompted the majority and minority staff directors to send out e-mails ... to legislative aides stating that it is up to individual members whether or not to comply with the requests."<sup>[13]</sup>

When members of Congress can decide themselves whether or not they want to disclose details about their pet projects to the public and even other members of Congress, it is obvious that taxpayers can not count on Congress to provide needed transparency for how federal funds will be spent.

Currently, taxpayers and the men and women in uniform on the front lines in Iraq and Afghanistan can only hope that the projects earmarked by members of Congress ensure the best equipment. This amendment would ensure that this is the case.

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<sup>[12]</sup> Walter Pincus. "Pentagon To Scrap Site Connected To Scandal," Washington Post, August 1, 2006, Page A4; <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/31/AR2006073101051.html>

<sup>[13]</sup> Megan Scully. "Coburn Probes House Defense Earmarks, Causing Heartburn Across The Capitol," National Journal's CongressDailyAM, June 14, 2007.

## **Congress Has Been Critical Of Executive Branch No Bid Contracts While Engaging In Essentially The Same Practice**

After the 2003 war in Iraq, the Halliburton Company, previously headed by Vice President Dick Cheney, was issued a \$2 billion no-bid contract for fuel distribution. Just days after Hurricane Katrina, in September 2005, the Bush administration awarded similar no-bid reconstruction contracts to companies including Halliburton's Kellogg, Brown and Root.

Many in Congress have been critical of the Bush's Administration's use of no-bid contracts for Iraq and Hurricane Katrina reconstruction efforts claiming these government contracts were unfairly awarded to companies that had political connections to the Administration.

Yet, members of Congress direct earmarks to political allies and campaign donors in the very same manner.

It would be disingenuous and hypocritical for those critics to rationalize that members of Congress should be exempt from federal spending laws requiring open competition and permitted to award no bid earmarks.

Congressman Henry Waxman, Chairman of the House Committee on Oversight and Government Reform, for example, stated in January 2007: "I expressed my concern that a lot of the contracting mistakes seem to happen over and over again — monopoly contracts, no-bid contracts. What we saw in Iraq is also what we saw in dealing with Hurricane Katrina. The result is that many of these strategies have resulted in a lot of wasted dollars and a lot of waste, fraud and abuse."<sup>[14]</sup>

The same has been found true in the Congressional earmarking practice.

In a September 23, 2003 letter, Senators Joseph Lieberman and Frank Lautenberg wrote "we are concerned about the secretive and non-competitive procedures used in awarding the reconstruction contracts" in Iraq.<sup>[15]</sup>

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<sup>[14]</sup> Aimee Curl. "Waxman Vow To Keep Watch Over Taxpayers," Federal Times, January 7, 2007;

<http://federaltimes.com/index.php?S=2464345>

<sup>[15]</sup> [http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=r&PressRelease\\_id=494&Month=9&Year=2003](http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=r&PressRelease_id=494&Month=9&Year=2003)

Many taxpayer groups, members of Congress, and American citizens have the same concerns about the secretive and non-competitive procedures used to direct Congressional earmarks.

Congress should lead by example rather than grandstanding with “do as I say, not as I do” political posturing.

### **The Senate Has Repeatedly Voted To Require Government Grants And Contracts To Be Competitively Bid**

In May 2006, the Senate voted 98 to zero to require that emergency hurricane relief and recovery contracts exceeding \$500,000 be subjected to competitive procedures.<sup>[16]</sup>

Three other similar amendments on no bid contracts were agreed to by unanimous consent in the Senate.<sup>[17]</sup>

There is no logical reason to continue to exempt Congress from the same rules that Congress has repeatedly voted to impose on the Executive Branch.

The Senate, in fact, adopted an amendment to do just this on July 26, 2007 as part of the Fiscal Year 2008 Department of Homeland Security Appropriations bill. Senate amendment 2442 to H.R. 2638, approved by voice vote, prohibits Congress from directing federal funds to specific recipients by requiring all Congressional pork projects to be subjected to open and fair competition using the same process used to award other government grants and contracts.

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<sup>[16]</sup> U.S. Senate Roll Call Vote 106, Senate Amendment. 3810 to H.R. 4939, May 2, 2006, [http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=r&PressRelease\\_id=494&Month=9&Year=2003](http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=r&PressRelease_id=494&Month=9&Year=2003)

<sup>[17]</sup> Senate Amendment 2605 to S. 2020, November 17, 2005, <http://www.congress.gov/cgi-lis/bdquery/D?d109:1:./temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2> ; Senate Amendment 4254 to S.2766, June 16, 2006, <http://www.congress.gov/cgi-lis/bdquery/D?d109:6:./temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2> ; Senate Amendment 4624 to H.R.5441, July 12, 2006, <http://www.congress.gov/cgi-lis/bdquery/D?d109:7:./temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2>

## **There Are Few Internal Controls To Prevent Inappropriate Earmarking Of Federal Dollars By Congress**

Unlike the Executive Branch, which has controls set by both law and regulation, the Legislative Branch has few internal controls to prevent inappropriate awarding of federal dollars.

Congressional earmark investigators have long encountered difficulties in trying to determine the purpose of earmarks and in many cases even the recipient of an earmark or the amount being earmarked.

Despite pledges to do so, the Senate has failed to enact any earmark transparency rules.

As a result of this shortcoming, questions linger about who has requested billions of dollars of projects included in appropriations bills.

*The Hill*, a Washington, DC newspaper, reported on July 17:

“As a proposal to require full disclosure of all Senate earmarks languishes, senators have not claimed responsibility for at least \$7.5 billion worth of projects approved by the Appropriations Committee, according to an analysis by a budget watchdog group.

“Under seven of 10 spending bills approved by the panel, more than \$26 billion has been earmarked for projects sought by both senators and the Bush administration, leaving nearly 30 percent unaccounted for, according to numbers compiled by Taxpayers for Common Sense. ...

“The Senate Appropriations Committee refutes the findings, arguing that the group misinterpreted a host of appropriations requirements as earmarks. For instance, the panel argues that \$6.5 billion requested by the Pentagon for the base realignment and closure program was considered ‘undisclosed earmarks’ by the group’s analysis of the military construction spending bill.

“But with no clear rules in place, the dispute highlights the murky nature of what exactly constitutes an earmark, or a directive to spend a specific amount of money for an individual project.

“There really is no precise understanding statutorily or otherwise about what an earmark is,’ said a Senate Appropriations Committee aide.”<sup>[18]</sup>

Senator Tom Harkin, a Senate Appropriations Subcommittee chairman, stated that he does not review all the requests for earmarks that his Subcommittee receives, admitting, “I don’t have time to do all that.”<sup>[19]</sup>

And while the House of Representatives has approved earmark rules changes, these changes may reveal who requests and receives earmarks but this transparency may still not change the inappropriate manner in which some earmarks have been chosen or what is actually known about the purpose of an earmark or the credentials of the entity chosen to receive an earmark.

House Appropriations Chairman David Obey lamented earlier this year that Committee members and staff do not had enough time to fully review the 36,000 earmark requests that have flooded the committee.<sup>[20]</sup>

A recent internal investigation by another House committee reveals that the earmark process is “dysfunctional” and inappropriate earmarks were awarded even when the professional committee staff were aware that those earmarks were inappropriate.

*The Los Angeles Times* reported on July 16:

“An internal investigation that the House Intelligence Committee has refused to make public portrays the panel as embarrassingly entangled in the Randy ‘Duke’ Cunningham bribery scandal.

“The report, a declassified version of which was obtained by the Los Angeles Times, describes the committee as a dysfunctional entity that served as a crossroads for almost every major figure in the ongoing criminal probe by the Justice Department.”

“The document describes breakdowns in leadership and controls that it says allowed Cunningham — the former congressman (R-Rancho Santa Fe) who

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<sup>[18]</sup> Manu Raju. “\$7.5B earmarks unclaimed,” *The Hill*, July 17, 2007; <http://thehill.com/leading-the-news/7.5b-earmarks-unclaimed-2007-07-17.html>

<sup>[19]</sup> Liriel Higa. “House Appropriators Find Different Ways to Spread Earmarks Around,” *Congressional Quarterly Today*, June 21, 2007; <http://public.cq.com/docs/cqt/news110-000002537550.html>

<sup>[20]</sup> Andrew Taylor, “Democrats Hide Pet Projects From Voters,” *Associated Press*, June 3, 2007.

began an eight-year prison term last year for taking bribes and evading taxes — to use his House position to steer millions of dollars to corrupt contractors. ...

“Overall, the document provides a penetrating look into how the committee itself became central to the scandal, describing an atmosphere in which senior aides were deeply troubled by Cunningham's actions but nevertheless complied with his requests out of fear.

“But the report and committee members’ ongoing disagreement over whether it should be released also reflect the political currents still swirling around the scandal.

“For all its finger-pointing at staffers, the document fails to address whether other committee members were aware of Cunningham's abuses or were culpable. ...

“‘They are so nervous about this report being out,’ said one congressional official, who spoke on condition of anonymity. ‘Members oppose putting this thing out because you read this and the natural question is: ‘Did you know this, and what did you do about it?’ I don't think any members wanted that scrutiny.’ ...

“The report's principal author said in an interview that the terms under which he was hired to conduct the investigation prevented him from examining lawmakers' roles.

“‘There was an agreement as to what they wanted to look at, and that was not anything that could be looked at under the sun,’ said Michael Stern, a former attorney in the House counsel's office who was hired by the committee to lead the internal probe. ‘The language did not include the culpability or potential involvement of other members.’ ...

“The document says that Cunningham began pressing to fund special projects from the moment he joined the House Intelligence Committee in 2001, and that his demands intensified.

“One top committee aide, Michael Meermans, told investigators that ‘on probably two or three occasions [Cunningham] figuratively put a finger in my forehead and said, ‘You are going to make this into the bill, right?’”

“The funding requests were repeatedly granted, Meermans said, even though staffers ‘started smelling something really bad in the program.’ ...

“Staffers said that Cunningham seemed more focused on who was getting the money than on the merits of the underlying projects, and that they were disturbed

by his close ties with contractors who seemed unqualified for the projects they had won.

“Aides said they acceded to Cunningham's demands ‘to keep him from going nuclear or ballistic’ and because they considered him an influential member of the House Appropriations Committee who might retaliate by blocking intelligence committee funding priorities. ...

“One project, a Pentagon counterintelligence program known as Project Fortress, was being handled by contractor Mitchell Wade, who has since pleaded guilty to paying bribes to Cunningham.

“At one point, senior committee aide Michele Lang sent out a staff e-mail describing the program, saying, ‘HOOAH! Another \$5 million of taxpayer money wasted.’ By 2005, the funding for Wade had swelled to \$25 million.

“Even Bassett expressed discomfort with Cunningham's manipulation of the system. According to the report, Bassett told senior committee staffers that he had ‘no confidence that Mitch Wade or anybody he was connected with really knew anything about counterintelligence or could do a good job for the U.S. taxpayer in that area.’

“Even so, the money continued to be earmarked for Wade’s company, MZM, partly because staffers were intimidated by Cunningham. ...

“The report says senior aides told investigators that they often complied with requests from members without knowing where the requested money would wind up. The report quotes Lang as telling investigators that ‘a lot of times when we get these [member additions], figuring out what the heck they are ... can be an intelligence thing in and of itself.’”<sup>[21]</sup>

By applying the same laws and the same set the rules requiring full and open competition to federal grants and contracts awarded by the Executive Branch to earmarking by Congress, the taxpayers can be guaranteed an increased level of integrity, accountability, and transparency in how federal dollars are spent.

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<sup>[21]</sup> Greg Miller. “Cunningham report portrays entangled panel,” Los Angeles Times, July 16, 2007; <http://www.latimes.com/news/politics/la-na-cunningham16jul16.0.6656321.full.story?coll=la-home-center>

## **CLAIMS/FACTS about Competitive Bidding of Earmarks**

**CLAIM:** It may be possible that only one company has the technology or interest in a project, but under this amendment, if no more than one entity bids on an earmarked project that may be vital to national security, no contract will be awarded at all.

**FACT:** Section (a)(3) of this amendment allows the Secretary of Defense to waive the requirement for numerous bids be received before awarding a contract if he determines “that the contract, grant, or cooperative agreement is essential to the mission” of the Department of Defense. Such a determination must be reported to Congress.

**CLAIM:** Senators and Members of Congress know best the priorities in their own states and districts and should not yield decision making to unaccountable and unelected government bureaucrats.

**FACT:** Senators and Members of Congress would still have the prerogative to earmark funds for projects in their states and districts. They would not, however, be given the sole authority to choose recipients of federal funds.

Every entity interested in seeking the earmarked funding for a particular state or local project would have the right to apply and compete for the contract. This is the same principle that Congress has applied to other federal grants and contracts.

Although there are problems with bureaucracies, putting the project through long standing competitive procedures legislated by Congress for federal grants and contracts reduces costs, political influences and potential for corruption while increasing the quality and performance of the project.

Competitive procedures developed by agencies for grants often include a peer review process whereby non-governmental experts in a certain area evaluate proposals in their area of expertise. While these processes may have shortcomings, they ensure transparency and accountability which is lacking in the current Member-directed earmark procedures.

**CLAIM:** Earmarks are already exposed to competition through the application process set up by Congressional offices and additional competition is not needed.

**FACT:** There is no formal competitive process that earmark requesters are required to undergo whatsoever. It is completely ad hoc and up to each Member's office to decide. Committees and Leadership offices, likewise, have no established standard or criteria for deciding what earmarks will be funded and which will not.

It is no secret that earmarks have been used as a form of political currency by Congressional leaders to reward party loyalty or in exchange for votes or by members of Congress to reward political allies or campaign contributors. This type of bidding, done without any transparency or accountability, is fundamentally unethical.

The best check would be to allow all interested parties to compete in an open process that adheres to the same rules that all other federal funds are administered under.

Congress would still set priorities, but a handful of politicians would no longer be able to pick winners and losers behind closed doors. This will end the unfair discrimination against all those wishing to compete to perform federally funded projects and curtail the use of federal funds to reward political allies and campaign contributors.

**CLAIM:** The purpose of earmarks is to direct spending priorities in Senators' states and Members' districts. Requiring competitive bidding would prevent the ability of Senators and Members to channel federal resources into their states and districts.

**FACT:** Members of Congress and Senators would still enjoy the ability to direct funding to projects in their districts and states. They, however, would no longer be able to hand pick winners and losers to receive federal funds.

A Senator, for instance, could request funding to build a bike path in a particular city or provide a service in a particular area, but all those who are eligible who

wish to compete for the funding for such projects would be welcome to bid for the contract.

It is true that applying this principle to Congressional initiatives would close the loophole that currently allows Congress to bypass the existing federal laws that apply to government procurement and grants. All other contracts and grants are required to go through strict evaluation processes.

Congress authorized the Federal Acquisition Regulation and other procurement laws to protect against abuses and Congress should not exempt itself from these procedures when awarding federal funds.

**CLAIM:** Competitive bidding would end the ability of elected politicians to direct funding to specific recipients.

**FACT:** This is essentially true.

The taxpayers' right to the best value for the lowest price trumps politicians' right to direct funding to their favored recipients. Those entities, however, would still be eligible to compete for the funds.

If earmarks cannot withstand competition, then they should not be allowed to continue in their present form. Any money that cannot stand up to fair competition and public scrutiny should not be spent.

## Examples of Wasteful No-Bid Defense Earmarks

**\$567 million for C-130J to Lockheed Martin:** In 2005, Congress earmarked more than \$36 million for a no-bid contract to Lockheed Martin for a C-130J. This money was spent by DOD despite the findings of a 2004 DOD Inspector General audit that: “substantiated the allegation that the C-130J aircraft does not meet contract specifications and therefore cannot perform its operational mission.” Then in 2006, \$531 million was awarded through a no-bid earmark to build eight more C-130J transport aircraft. This particular no-bid earmark resulted in not only wasted money, but put our troops at significant risk.<sup>[22]</sup>

**\$110 million for F-15s to Boeing:** In the FY 2005 Defense Appropriations bill, \$110 million was earmarked for a no-bid contract to Boeing for the production of F-15s despite the fact that the Defense Department did not want them. DOD had, in fact, already developed the F-22 to replace the old F-15. Under competitive procedures, DOD would not have spent this money so frivolously, but it was done in order to keep an F-15 factory open.<sup>[23]</sup>

**\$1.5 million for telescope that searches for aliens in outer space:** In 2005, a non-competitive grant was requested for the University of California, Berkeley’s Search for Extraterrestrial Intelligence Institute. This money was requested to come out of the budget of the Department of Defense in a time of war.

**\$37 million for technology that couldn’t be used:** Last year, the *Washington Post* published an article titled “The Project That Wouldn’t Die; Using earmarks, members of Congress kept money flowing to a local company that got \$37 million for technology the military couldn’t use.” Vibration & Sound Solutions Ltd., a Virginia defense contractor, has received a steady flow of federal funds for various purposes and, according to the *Post*, “all the applications have one thing in common: The Pentagon hasn’t wanted them.”<sup>[24]</sup>

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<sup>[22]</sup> DOD/IG, “Contracting For and Performance Of the C130J Aircraft (D-2004-102),” July 23, 2004, pg. 4.

<http://www.dodig.mil/Audit/reports/fy04/04-102.pdf>

<sup>[23]</sup> <http://www.americansforprosperity.org/index.php?id=984>

<sup>[24]</sup> Charles R. Babcock. “The Project That Wouldn't Die,” *Washington Post*, page D1, June 19, 2006;

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/18/AR2006061800631.html?referrer=emailarticle>

**\$63 million for a faulty aircraft:** The DP-2 aircraft has received \$63 million in taxpayer funds-- entirely through earmarks-- despite a series of Pentagon and NASA studies that found fault with the project from its beginning.<sup>[25]</sup>

**\$30 million for unused software:** More than \$30 million has been directed to 21st Century Systems Inc. (21 CSI) for the development of military software. Yet, only one piece of that software has been used-- in a single Marine camp in Iraq-- and it is no longer in use.<sup>[26]</sup> The DOD authorization bill provides another \$7.5 million for 21 CSI for the same purpose even though the Pentagon did not request the additional funding, noting that “available resources were allocated to fund higher Air Force priorities.”<sup>[27]</sup>

**About \$1.7 million to improve the shelf life of vegetables:** Nearly \$1.7 million was earmarked in the Fiscal Year 2007 Defense Appropriations bill for Arcadia Biosciences, based in Seattle to improve the shelf life of vegetables. The funding is supposed to help “establish and evaluate variant populations of bell pepper, cantaloupe and strawberry.”<sup>[28]</sup>

**\$500,000 for Arctic Winter Games:** Half a million dollars from the Department of Defense’s budget was earmarked to fund the 19<sup>th</sup> Arctic Winter games held in the Kenai Peninsula in Alaska. The 2008 Arctic Winter Games budget summary includes the \$500,000 earmark as a part of its \$5.9 million budget.

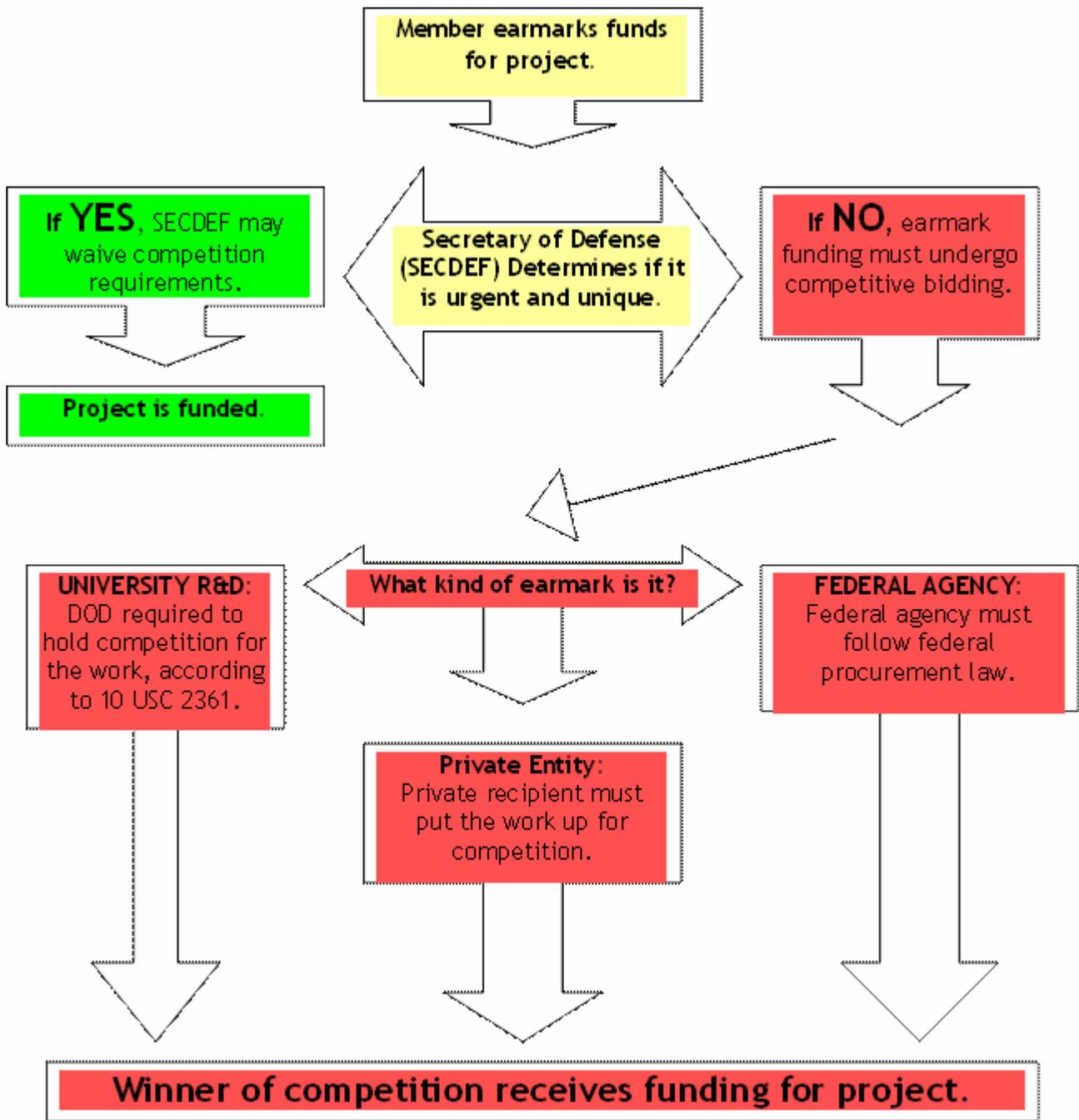
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<sup>[25]</sup> Jerry Kammer and Paul M. Krawzak. “Pentagon rejected aircraft built by campaign donor,” San Diego Union Tribune/COPLEY NEWS SERVICE, June 13, 2007; <http://www.signonsandiego.com/news/politics/20070613-9999-1n13airmark.html>

<sup>[26]</sup> Paul Goodsell. “Firms count on Congress for funding,” Omaha World-Herald, April 29, 2007; [http://www.omaha.com/index.php?u\\_page=2798&u\\_sid=2374508](http://www.omaha.com/index.php?u_page=2798&u_sid=2374508)

<sup>[27]</sup> Department of Defense Information Paper, dated May 15, 2007, provided to the office of Sen. Tom Coburn, M.D.

<sup>[28]</sup> “Murray and Cantwell Announce Senate Approval of nearly \$57.5 million in Job-Creating Defense Contracts for Washington State,” press release, September 29, 2006  
<http://murray.senate.gov/news.cfm?id=264157>



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